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COURT-ORDERED COLLEGE: THE CONSTITUTIONALITY AND EFFECTS OF POST-MAJORITY SUPPORT

INTRODUCTION

In today's society, two things are certain: divorce is common and college is expensive. It should be no surprise that when a child from a family of divorce goes to college, the question of who will pay for his or her education is likely to arise. Though child support typically terminates when a child reaches the age of adulthood, many states have enacted statutes that might force a parent to contribute to a child's educational expenses throughout college. Illinois is one of those states. Section 513 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) titled "Educational Expenses for a Non-Minor Child" allows a court, on a case-by-case basis, to mandate one or both unmarried parents to contribute to the post-majority¹ educational expenses of their child.² Since its enactment, the statute's constitutionality has been challenged twice as a violation of equal protection.³ Opponents argue that the statute unfairly discriminates against unmarried parents by forcing them to pay for their child's education, while it does not impose the same requirements on married parents.

This Comment examines § 513 of the IMDMA and the constitutionality, as well as the implications, of the statute. It compares what courts in other states have done with similar statutes as well as the rulings of prior claims in Illinois. Further, this Comment discusses real world scenarios of how the statute applies to various familial situations. This Comment also proposes recommendations on how to amend the statute to address some of its practical downfalls.

Part I describes the statute and its background. This Part further analyzes the relevant cases in Illinois that have previously challenged the statute, as well as cases in other states that have challenged similar post-majority educational laws. Part II analyzes the likelihood of

1. "Post-majority expenses" are expenses for a child who has achieved the age of majority. In Illinois, the age of majority is 18. *Munck v. Munck*, 378 N.E.2d 1252, 1255 (Ill. App. Ct. 1978). If the child is still in high school when he turns eighteen, he will reach the age of majority when he either graduates high school or turns nineteen, whichever comes first. Jody Meyer Yazici et al., *The Illinois Practice of Family Law*, in 12 ILLINOIS PRACTICE SERIES 419 (17th ed. 2018).

2. 750 ILL. COMP. STAT. ANN. 5/513 (West 2019).

3. U.S. CONST. amend. XIV.

whether a constitutional claim would succeed. Part II also discusses how the statute may apply unfairly to different family structures and addresses some grievances against the statute. Part III proposes legislative changes to § 513 in the event that the statute is upheld as constitutional.

I. BACKGROUND

This Part explains the background and the purpose of § 513 of the IMDMA. This Part also provides the language of the statute and describes its application. Next, this Part discusses the framework of an equal protection claim and reviews how previous courts in other states have ruled on constitutional challenges to similar statutes. Finally, this Part illustrates how Illinois courts have ruled on equal protection claims related to § 513.

A. Section 513: Educational Expenses for a Non-Minor Child

The IMDMA was enacted in 1977 after Illinois adopted a modified version of the Uniform Marriage and Divorce Act (UMDA).⁴ Among the wave of newly introduced statutes was § 513 of the IMDMA, which makes it possible for a court to order divorced parents to contribute to college education expenses for their post-majority aged children.⁵ Prior to this change, a parents' child support obligations would have expired upon the child reaching age eighteen. After the change, they now can be liable for further expenses beyond the age of majority.

Section 513 states that a court may award sums of money from either or both parents for the educational expenses of any child of the parties.⁶ Under the statute, a child's post-secondary expenses include: tuition and fees, housing expenses, medical expenses and insurance, and living expenses such as food, utilities, and transportation.⁷ The amount of tuition and fees is capped at the amount of in-state tuition paid at the University of Illinois at Urbana-Champaign.⁸ Furthermore,

4. Sarah Frances King, *Till Death Do Us Part or Otherwise Approved by the Court? Interpreting the Language of § 510(C) of the IMDMA Regarding Post-Death Maintenance Obligations and Life Insurance*, 60 DEPAUL L. REV. 713, 717 (2011).

5. The statute allows for contribution to "college education or vocational or professional or other training," unless agreed otherwise by the parties. Yazici et al., *supra* note 1, at 421.

6. 750 ILL. COMP. STAT. ANN. 5/513(a) (West 2019).

7. *Id.* 5/513(d)(1)-(4).

8. *Id.* 5/513(d)(1). Though the amount is capped at the cost of the University of Illinois at Urbana-Champaign, this still exposes many parents to the risk of an extremely large financial obligation. The University of Illinois is the most expensive public university in the state of Illinois and was ranked as one of the most expensive public universities in the country in 2014.

the statute provides for payment of expenses incurred during school breaks.⁹ For example, if the child is away from school and is living in the home of Parent A, Parent B may be ordered to contribute to expenses incurred by Parent A or by the child.¹⁰

Under § 513, not every non-married parent is mandated to contribute to their child's college expenses.¹¹ Instead, the court will consider a variety of factors in order to determine whether or not to order one or both parents to contribute.¹² These factors include:

- (1) The present and future financial resources of both parents, including, but not limited to, savings for retirement;¹³
- (2) The standard of living the child would have enjoyed had the marriage not been dissolved;¹⁴
- (3) The financial resources of the child;¹⁵
- (4) The child's academic performance.¹⁶

The court must also consider all further "relevant factors that appear reasonable and necessary."¹⁷ After consideration of the enumerated factors and all others that the court deems necessary, the court has the discretion to order one or both parents to contribute payment either to the student, to the other parent, or to the university or college directly.¹⁸ The parents' obligation to pay these expenses will terminate when the child reaches the age of twenty-three, obtains his

Allan Smith, *The 10 Most Expensive State Schools*, BUSINESS INSIDER (July 2, 2014, 2:04 PM), <https://www.businessinsider.com/most-expensive-public-universities-2014-7>. For the 2019-2020 school year, in-state tuition ranges from \$16,210-\$21,214 per year, room and board costs \$11,480, and supplies and expenses are estimated at a combined \$3,700. *Undergraduate Admissions: Tuition*, U. OF ILL. BD. OF TRUSTEES, <https://admissions.illinois.edu/invest/tuition> (last visited Aug. 25, 2019). Expenses for student organizations such as fraternities and sororities, and other living expenses, can drive this number up even higher.

9. 750 ILL. COMP. STAT. ANN. 5/513(d)(4) (West 2019).

10. *Id.* 5/513(d)(4)(B).

11. *Id.* 5/513.

12. *Id.* 5/513(j).

13. *Id.* 5/513(j)(1). A 2016 amendment to the statute added the language "including, but not limited to, savings for retirement." Yazici et al., *supra* note 1, at 421. In addition, the second district has held that this factor may include a consideration of a new spouse's income. *In re Marriage of Drysch*, 732 N.E.2d 125, 130 (Ill. App. Ct. 2000). Because the statute uses the term "financial resources" rather than "income," a new spouse's income may be considered as part of a parent's "financial resources" pursuant to the statute. *Id.* at 129.

14. 750 ILL. COMP. STAT. ANN. 5/513(j)(2) (West 2019).

15. Funds contained in a college savings account that were deposited prior to the dissolution of marriage are considered to be "resources of the child" for purposes of this factor. *Id.* 5/513(j)(3). However, funds deposited after the dissolution are considered to be a contribution from whichever party contributed to the account. *Id.* 5/513(h).

16. 750 ILL. COMP. STAT. ANN. 5/513(j)(4) (West 2019).

17. *Id.* 5/513(j).

18. *Id.* 5/513(e).

bachelor's degree, fails to maintain a "C" grade point average, or gets married.¹⁹

Although child support generally expires when the child turns eighteen and reaches adulthood, this statute makes it possible for divorced parents to continue to be liable for their child's expenses for up to five years after the child turns eighteen.²⁰ The purpose of this statute is to promote the best interests of the child and to enforce obligations on divorced parents that would have been provided had the marriage stayed intact.²¹ When enacting the statute, the legislature sought to address both the short and long term economic and social impacts of divorce by providing means to mitigate any potential harm that divorce may cause children.²²

B. Equal Protection Claim

Many who oppose § 513 claim that the statute violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Equal Protection Clause states that: "No State shall . . . deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the law."²³ Under the Equal Protection Clause, states are given wide discretion to create laws that affect groups of people in different ways.²⁴ Statutes are presumed to be constitutional and the court must construe a statute to affirm its constitutionality if reasonably possible.²⁵ However, persons who are similarly situated may not be unfairly discriminated against unless the government can demonstrate an appropriate interest for doing so.²⁶ To determine if a statute violates the Fourteenth Amendment, a court must first determine the nature of the right that is impacted.²⁷ If the statute disadvantages a suspect class or infringes upon a fundamental right protected by the Constitution, the court will analyze the statute under the strict scrutiny standard of review.²⁸ Under strict scrutiny, the statute must be

19. *Id.* 5/513(g).

20. *Id.*

21. King, *supra* note 4, at 745.

22. *In re Marriage of Thompson*, 398 N.E.2d 17, 22 (Ill. App. Ct. 1979).

23. U.S. CONST. amend. XIV.

24. *McGowan v. Maryland*, 366 U.S. 420, 427 (1961).

25. *In re D.W.*, 827 N.W.2d 466, 480 (Ill. 2005).

26. *People v. Masterson*, 958 N.E.2d 686, 691 (Ill. 2011).

27. *Id.*

28. *Id.* A suspect class is a group of persons who has been "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process," and is therefore deserving of heightened judicial scrutiny. *Mass. Bd. of Ret. v. Murgia*,

narrowly tailored to achieve a compelling governmental interest.²⁹ However, if the statute does not disadvantage a suspect class or impermissibly infringe upon a fundamental right, the court will instead use a rational basis standard.³⁰ Under this form of review, the statute will survive a constitutional attack if the court finds that a legitimate state interest exists and that the statute is rationally related to that legitimate interest.³¹ If the statute passes this analysis, the statute will be upheld as constitutional.³²

C. Interpretation in Other States

Many states have similar statutes that were also enacted in the 1970s following the UMDA guidelines.³³ After enactment, many parents challenged those statutes as unconstitutional on the grounds of equal protection, but most courts have refused to strike down such laws as unconstitutional.³⁴

For example, in *Childers v. Childers*, the Supreme Court of Washington declined to hold a statute similar to § 513 as unconstitutional on the basis of equal protection.³⁵ In *Childers*, a father challenged the statute, arguing that divorced parents should be able to “legally bid their children ‘a fiscal farewell’ at age [eighteen]” just as married parents are able to do.³⁶ The court, however, disagreed.³⁷ The court held that the state had a legitimate interest in protecting children that come from broken homes and ensuring that their disadvantages are minimized.³⁸ The court noted that the statute does not require all divorced parents to pay for their child’s education, just those who likely would have if the marriage stayed intact.³⁹ These children should not be pe-

427 U.S. 307, 313 (1976). Classifications based on race and national origin have been treated as suspect classes under the law of equal protection. *Id.*

29. *Masterson*, 958 N.E.2d at 691.

30. *Id.*

31. *Id.*

32. *Id.*

33. Lindsay E. Cohen, *Daddy, Will You Buy Me a College Education? Children of Divorce and the Constitutional Implications of Noncustodial Parents Providing for Higher Education*, 66 MO. L. REV. 187, 193–94 (2001).

34. See *Neudecker v. Neudecker*, 577 N.E. 960 (N.D. 1991); *In re Marriage of Vrban*, 293 N.W.2d 198 (Iowa 1980); *LeClair v. LeClair*, 624 A.2d 1350 (N.H. 1993); *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995); *Birchfield v. Birchfield*, 417 N.W.2d 891 (S.D. 1988); *Childers v. Childers*, 575 P.2d 201, 209 (Wash. 1978).

35. *Childers*, 575 P.2d at 209.

36. *Id.* at 207.

37. *Id.*

38. *Id.*

39. *Id.*

nalized for their parents' decision to divorce.⁴⁰ The court concluded that the legislature, when enacting the statute, simply sought to secure the education for children that they would have received from their parents but for the divorce.⁴¹ Therefore, the statute was deemed constitutional under a rational basis standard.⁴²

Courts in several other states followed *Childers* and have upheld post-majority support statutes as constitutional.⁴³ These courts have generally held that the state has a rational interest in mitigating harmful effects on children from divorced families.⁴⁴

However, in *Curtis v. Kline*, the Pennsylvania Supreme Court held a law, similar to § 513, unconstitutional.⁴⁵ The Pennsylvania law required divorced parents to financially contribute to their child's college education.⁴⁶ In *Curtis*, a divorced father petitioned to terminate financial support on the grounds that obligating divorced parents to provide post-secondary education to adult children violated the Equal Protection Clause.⁴⁷ The court held that the father's equal protection rights had been violated.⁴⁸ The court used a rational basis standard to review the father's constitutional right.⁴⁹ The state's legitimate interest was "requiring some parental financial assistance for a higher education for children of parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation."⁵⁰

In *Curtis*, the court determined that the statute created two classes of young adults rather than two classes of parents.⁵¹ These classes consisted of children with married parents versus children with unmarried parents.⁵² The state established a benefit to the class of children with unmarried parents, by requiring their parents to fund their college education.⁵³ The court held there was "no rational basis for the state government to provide only certain adult citizens with legal means to

40. *Id.*

41. *Childers*, 575 P.2d at 209.

42. *Id.*

43. See *Neudecker v. Neudecker*, 577 N.E.2d 960, 962-63 (N.D. 1991); *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980); *LeClair v. LeClair*, 624 A.2d 1350, 1357 (N.H. 1993); *Birchfield v. Birchfield*, 417 N.W.2d 891, 894 (S.D. 1988).

44. See *Neudecker*, 577 N.E.2d at 962-63; *Vrban*, 293 N.W.2d at 202; *LeClair*, 624 A.2d at 1357; *Birchfield*, 417 N.W.2d at 894.

45. *Curtis v. Kline*, 666 A.2d 265, 270 (Pa. 1995).

46. *Id.*

47. *Id.* at 267.

48. *Id.* at 269-70.

49. *Id.* at 269.

50. *Id.*

51. *Curtis*, 666 A.2d at 270.

52. *Id.*

53. *Id.* at 269.

overcome the difficulties they encounter” in seeking post-secondary education.⁵⁴

The court rejected the reasoning of other courts that a rational interest existed to promote the college education of children of divorce.⁵⁵ It denied that the discrimination was focused on parents, and instead stated that the issue at hand was “whether similarly situated young adults. i.e.[,] those in need of financial assistance, may be treated differently.”⁵⁶ The court concluded that there is no rational reason for treating similarly situated young adults differently, and the statute was therefore deemed unconstitutional.⁵⁷ The *Curtis* court analyzed the constitutionality in a distinct manner than those before it and found that the statute violated children’s rights rather than the parent’s rights.⁵⁸

D. *Prior Claims in Illinois*

Illinois courts have heard challenges to the constitutionality of § 513 twice: first in 1978, just one year after the statute’s enactment, and more recently in 2018 in a case now pending appeal to the Illinois Supreme Court.

The Illinois Supreme Court first ruled on the constitutionality of § 513 in the case of *Kujawinski v. Kujawinski*.⁵⁹ In *Kujawinski*, § 513 was challenged as unconstitutional under the Equal Protection Clause.⁶⁰ The plaintiff alleged that § 513 “invidiously discriminate[d] against divorced parents.”⁶¹ Moreover, the plaintiff argued that the statute was unconstitutional because it required divorced parents to pay for the education of the children beyond the age of majority, while the same burden was not imposed on non-divorced parents.⁶²

The Illinois Supreme Court disagreed.⁶³ The court held that § 513 was rationally related to a legitimate legislative purpose and therefore did not violate the Equal Protection Clause.⁶⁴ The court reasoned that after a divorce, ex-spouses will go their separate ways, begin new lives, and amass additional expenses that they would not have accrued had

54. *Id.* at 269–70.

55. *Id.* at 270.

56. *Id.*

57. *Curtis*, 666 A.2d at 270.

58. *Id.*

59. *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1384–85 (Ill. 1978).

60. *Id.*

61. *Id.* at 1388.

62. *Id.*

63. *Id.*

64. *Id.*

they stayed together.⁶⁵ As a result parents may not always be able to support their children to the same extent that they would have if they were still married and living with their child.⁶⁶ The state has a legitimate interest in ensuring that children of divorce will not suffer such potential harm.⁶⁷ The court stated:

In a normal household, parents direct their children as to when and how they should work or study, that is on the assumption of a normal family relationship, where parental love and moral obligation dictate what is best for the children. Under such circumstances, natural pride in the attainments of a child would demand of parents provision for a college education, even at a sacrifice. When we turn to divorced parents a disrupted family society cannot count on normal protection for the child, and it is here that equity takes control to mitigate the hardship that may befall children of divorced parents.⁶⁸

The court reasoned that the legislature enacted this law to mitigate the economic and personal impact that divorce has on families and children, and held that the statute is rationally related to accomplishing this legislative goal.⁶⁹ The court explained that if parents could have been expected to provide an education for their child had they not divorced, the legislature has an interest in ensuring they do so after divorce.⁷⁰ Therefore, the court determined that the statute did not violate the Equal Protection Clause and was constitutionally sound.⁷¹

Section 513 was constitutionally challenged again in the 2018 parentage case of *Yakich v. Aulds*, where a DuPage County judge ruled the statute was unconstitutional.⁷² Here, the father, who was never married to the child's mother, challenged the statute as unconstitutional on the basis of the Equal Protection Clause.⁷³ The father had no issue with paying the full amount of college tuition for his daughter.⁷⁴ However, he disagreed with her choice of school, which was known as a party school and did not offer the major she wished to study.⁷⁵ The father argued that § 513 unfairly ordered divorced or never-married parents to pay the college expenses of their children, but did not re-

65. *Kujawinski*, 376 N.E.2d at 1388.

66. *Id.*

67. *Id.* at 1390.

68. *Id.* (citing *Maitzen v. Maitzen*, 163 N.E.2d 840, 843 (Ill. App. Ct. 1959)).

69. *Id.*

70. *Id.*

71. *Kujawinski*, 376 N.E.2d at 1390.

72. *Yakich v. Aulds*, Eighteenth Judicial Circuit DuPage Cty., No. 15-F-651 (Ill. Cir. Ct. May 4, 2018).

73. *Id.*

74. *Id.*

75. *Id.*

quire the same of married parents.⁷⁶ He further alleged that § 513 impermissibly created two classes of children—those whose parents are unmarried and those whose parents are married.⁷⁷ Furthermore, he argued that as an unmarried parent he was denied the right to make parental decisions related to his child’s education, because the statute does not allow any parental input as to where the child attends college before ordering the parent to pay for said expenses.⁷⁸ The father pointed out that married parents enjoy this right and are not ordered to pay their children’s expenses when they disagree with their child’s choice of school.⁷⁹

Despite the previous ruling in *Kujawinski*, which addressed similar grievances, the father in *Yakich* argued that in light of the “changed demographics, societal attitudes and developments in case law in both state and federal courts,” the rational basis for the Illinois Supreme Court’s ruling in *Kujawinski* no longer existed.⁸⁰ He noted that in 2018, two-parent, married families made up less than half of all families, and children of unmarried parents are considered “normal” based on today’s demographics.⁸¹ The father cited several studies supporting this position, including the facts that the divorce rate as of 2011 in Illinois was forty-six percent, unmarried women accounted for forty percent of the birth rate in the United States as of 2014, and only forty-six percent of children under the age of eighteen live in a two-parent, married home.⁸² These statistics, the father contended, supported the argument that the state interest of mitigating the alleged harms of divorce no longer exists, as divorce is no longer unusual or necessarily a disadvantage.⁸³ In fact, divorce is now “the norm” among families in Illinois and America.⁸⁴

The DuPage County Court agreed with the father in *Yakich*.⁸⁵ The court held that society has greatly changed since 1978, and therefore the rational basis cited in *Kujawinski* is no longer achievable.⁸⁶ Furthermore, there is no other rational basis, other than that cited in *Kujawinski*, that justifies the statute.⁸⁷ Because a rational basis no

76. *Id.*

77. *Id.*

78. *Yakich*, No. 15-F-651.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Yakich*, No. 15-F-651.

85. *Id.*

86. *Id.*

87. *Id.*

longer exists, the court concluded that the father in *Yakich* was denied his constitutional right to equal protection.⁸⁸

The *Yakich* case is currently pending appeal before the Illinois Supreme Court, which will finally settle the issue of whether § 513 is unconstitutional on the basis of equal protection.⁸⁹ While opponents may feel that the statute is unfair to unmarried parents and unlawfully discriminates against them, challengers to the statute may have a hard time overcoming rational basis review in the state's highest court. The argument that the court should find that the statute is not rationally related to *any* legitimate state interest is a difficult one to make and is unlikely to succeed.

II. ANALYSIS

Under the Equal Protection Clause of the United States Constitution,⁹⁰ all laws must treat similarly situated persons in the same manner.⁹¹ Here, it is clear that the statute in question, IMDMA's provision regarding post-majority educational expenses, treats similarly situated persons differently.⁹² The statute requires some unmarried parents to pay for college, while it does not require the same from married parents.⁹³ Although on its face this statute seems unfair to divorced parents, this alone does not make it unconstitutional *per se*. This Part will address the likelihood of success of a constitutional claim against § 513 in today's society. Further, this Part will discuss the implications of the statute on the lives of parents in various situations, and how the statute often has unfair consequences for both parents and children. Finally, this Part will illustrate how the statute may be underinclusive in alleviating the harms it claims to mitigate.

A. *Unconstitutional Discrimination Against Parents*

The primary argument by opponents of § 513 of the IMDMA is that the statute unreasonably creates two classes of persons—married parents and unmarried parents.⁹⁴ Parents ordered to pay child support for their post-majority aged child have argued that the statute unconstitutionally discriminates against unmarried parents by ordering them to

88. *Id.*

89. *Yakich v. Aulds*, Eighteenth Judicial Circuit DuPage Cty., No. 15-F-651 (Ill. Cir. Ct. May 4, 2018), *appeal docketed*, No. 123667 (Ill. May 31, 2018).

90. U.S. CONST. amend. XIV.

91. *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966).

92. 750 ILL. COMP. STAT. ANN. 5/513 (West 2019).

93. *Id.*

94. *Id.*

pay for their post-majority aged child's college education; whereas married parents with children over the age of eighteen may not be required to pay for their children's education.⁹⁵

1. *Standard of Review*

To determine the constitutionality of § 513, the court will first have to determine what standard of review should be used to evaluate the statute. Rational basis review will be used by the court unless the discrimination is against a suspect class or infringes upon a fundamental right.⁹⁶ The classification of parents here—married versus unmarried—is not recognized as a suspect class that triggers heightened scrutiny.⁹⁷ Therefore, the only other situation that would require a heightened form of scrutiny is if the statute infringes upon a fundamental right of unmarried parents.⁹⁸

Fundamental rights include both those enumerated in the Constitution and those recognized by the courts. The U.S. Supreme Court has established the principle that individuals have a constitutionally protected right to control the upbringing of their children.⁹⁹ Within this fundamental right is the principle that, absent abuse and neglect, the courts and legislatures typically may not intrude into a family and make parenting decisions.¹⁰⁰ Statutes that infringe upon this right may be subject to a heightened form of scrutiny.¹⁰¹

Upon commencement of a dissolution action, however, the state becomes involved in the parties' parental decision-making and becomes a "third party" to the action.¹⁰² Yet, this does not necessarily mean that a parent's right to make decisions for their child is always weak-

95. See *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1385 (Ill. 1978); see also *Curtis v. Kline*, 666 A.2d 265, 268 (Pa. 1995).

96. *People v. Masterson*, 958 N.E.2d 686, 691 (Ill. 2011).

97. The court will evaluate a constitutional claim under strict scrutiny if the statute discriminates against a suspect class. Traditionally, classifications of race, national origin and illegitimacy are recognized as suspect classes and trigger strict scrutiny in equal protection claims. Additionally, discrimination based on sex or gender triggers intermediate scrutiny. See *Korematsu v. United States*, 323 U.S. 214, 216 (1944); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Craig v. Boren*, 429 U.S. 190, 197 (1976).

98. See *Skinner*, 316 U.S. at 541.

99. *In re D.W.*, 827 N.E.2d 466, 481 (Ill. 2005).

100. *Id.* See also *Meyer v. Nebraska*, 262 U.S. 390, 400–01 (1923) (finding that parents have liberty to allow their children to be taught foreign languages in schools if they so choose); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 533–34 (1925) (finding that parents have a fundamental right to choose how and where to educate their child); *Roe v. Wade*, 410 U.S. 113, 152 (1973) (finding constitutional right to decide to have a child).

101. See *Roe*, 410 U.S. at 155.

102. *In re Marriage of Duffy*, 718 N.E.2d 286, 288 (Ill. App. Ct. 1999).

ened upon divorce.¹⁰³ The court will give great deference to the parent's decisions, provided that they are able to come to an agreement regarding the child-related issues.¹⁰⁴ Thus, even parents going through divorce proceedings are presumed to have parental autonomy and to act in the best interests of their child.¹⁰⁵ However, unlike an intact family, when parents cannot come to an agreement that is in the best interests of the child the court will step in and become the default decision maker for the child-related issues.¹⁰⁶ Thus, the right to parental autonomy is not absolute.¹⁰⁷ In such circumstances, the court is able to make decisions for the parents regarding parenting time, decision making, and support.¹⁰⁸ Similarly, courts gain the ability to order parents to contribute to educational expenses, including expenses for college. As the Indiana Supreme Court stated, "expenses of college are not unlike those of orthodontia, music lessons, summer camp, and various other optional undertakings within the discretion of married parents but subject to compulsory payment . . ." for parents who are not together.¹⁰⁹ Therefore, imposing a financial obligation upon unmarried parents to contribute to college expenses for their children likely does not interfere with a parent's fundamental right to raise his or her children.

Because § 513 of the IMDMA does not discriminate against a suspect class or infringe on a fundamental right, the court should use rational basis review to determine the constitutionality of the statute.¹¹⁰ Under this standard, the statute must be rationally related to a legitimate state interest.¹¹¹ Therefore, the question turns on whether a statute requiring divorced parents to fund their child's college education is rationally related to a legitimate interest of the state of Illinois.

2. *Does a Legitimate State Interest Exist?*

The alleged legitimate state interest which justifies § 513 is the state's goal of mitigating the economic and personal impact that divorce has on children.¹¹² One main argument against this state interest is that, since divorce and unmarried families are much more common

103. *In re Marriage of Coulter*, 976 N.E.2d 337, 342 (Ill. 2012).

104. *Id.*

105. *Id.* (citing *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000)).

106. *Fawzey v. Fawzey*, 973 A.2d 347, 360 (N.J. 2009).

107. *Lehman v. Stephens*, 499 N.E.2d 103, 109 (Ill. App. Ct. 1986).

108. *Fawzey*, 973 A.2d at 360.

109. *Neudecker v. Neudecker*, 577 N.E.2d 960, 962 (Ind. 1991).

110. *People v. Masterson*, 958 N.E.2d 686, 691 (Ill. 2011).

111. *Id.*

112. *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1389 (Ill. 1978).

now than they were when *Kujawinski* was decided in 1978, there is no longer a disparate impact and therefore there is no legitimate state interest.¹¹³

It is true that in today's society, divorce affects a substantial number of families. Based on statistics that show that fifty percent of marriages end in divorce, it is indisputable that divorce is a common occurrence in America.¹¹⁴ After the introduction of no-fault divorce in 1969, the 1970's saw exponential growth in the number of divorces nation-wide.¹¹⁵ However, after reaching a record high in 1981, the divorce rate began to fluctuate and eventually decline.¹¹⁶ Therefore, while true that divorce is common in today's society, the argument that divorce today is drastically more prevalent than it was in 1978 is not necessarily grounded.¹¹⁷ Nonetheless, divorce is not the only source of changing family demographics in America. Since 1979, the rate of children born to non-married families has drastically risen, while accompanied by a decrease in marriages overall.¹¹⁸ In 2017, one-in-four parents who were living with a child were unmarried.¹¹⁹ Additionally, the number of children living with an unmarried parent has almost tripled since 1968, totaling roughly 24 million children.¹²⁰ Therefore, despite a leveling-off of divorce rates, non-intact families are indeed very common in today's society.

Critics of § 513 argue that because divorce and birth outside of marriage is so common, the state interest of mitigating the harm to these

113. See *Yakich v. Aulds*, Eighteenth Judicial Circuit DuPage Cty., No. 15-F-651 (Ill. Cir. Ct. May 4, 2018).

114. Kim Parker & Renee Stepler, *As US Marriage Rate Hovers at 50%, Education Gap in Marital Status Widens*, PEW RES. CTR. (Sept. 14, 2017), <http://www.pewresearch.org/fact-tank/2017/09/14/as-u-s-marriage-rate-hovers-at-50-education-gap-in-marital-status-widens/>.

115. W. Bradford Wilcox, *The Evolution of Divorce*, NAT'L AFFAIRS, Fall 2009, <https://www.nationalaffairs.com/publications/detail/the-evolution-of-divorce>.

116. National Center for Health Statistics, *Advance Report of Final Divorce Statistics*, 1987, 38 MONTHLY VITAL STATS. REP., May 1990, at 1, 7, https://www.cdc.gov/nchs/data/mvstr/supp/mv38_12s2.pdf.

117. In 1978 the divorce "rate was 5.2 per 1,000" United States citizens, whereas the rate in 2017 was 2.9 per 1,000 citizens. Compare National Center for Health Statistics, *Advance Report Final Divorce Statistics, 1978*, 29 MONTHLY VITAL STATS. REP., July 1980, at 1, 1, with *National Marriage and Divorce Rate Trends*, CDC, <https://www.cdc.gov/nchs/data/dvs/national-marriage-divorce-rates-00-17.pdf> (last visited Oct. 31, 2019), and *National Marriage and Divorce Rate Trends*, CDC, https://www.cdc.gov/nchs/data/dvs/national_marriage_divorce_rates_00-16.pdf (last visited Oct. 31, 2019).

118. Gretchen Livingston, *The Changing Profile of Unmarried Parents*, PEW RES. CTR. (Apr. 25, 2018), <https://www.pewsocialtrends.org/2018/04/25/the-changing-profile-of-unmarried-parents/>.

119. *Id.*

120. The number of children living with an unmarried parent has increased from thirteen percent in 1968 to thirty-two percent in 2017. *Id.*

children has diminished accordingly.¹²¹ These opponents assert that if such a high number of families are broken—making non-intact families the norm—there is no rational state interest in giving extra assistance to the majority.¹²² However, the commonality of separated families does not mean that these children do not still face challenges that children in married families do not endure, and mitigating these challenges certainly may be a state interest.

Children of divorce are twice as likely to drop out of high school than children from intact families.¹²³ Additionally, these children are more likely to have lower educational aspirations, lower test scores, and are more likely to be held back a grade and have a lower grade point average than those from intact families.¹²⁴ Further, children with divorced parents are likely to score lower on average on “measures of achievement, adjustment and well-being,” and are more likely to act out.¹²⁵ Studies have found that children with unmarried parents have lower math and reading skills and lower standardized test skills on average.¹²⁶ These children are more likely to drop out of secondary school than those raised in intact family and according to one study, only 67.2% of children from single-parent homes and 65.4% from stepfamilies will graduate high school—compared to the 85% of adolescents from intact families.¹²⁷

These disparities in academic achievement may be causally related to the lack of parental involvement that often occurs in divorced families.¹²⁸ Parents in intact families participate more in school, discuss school more often with their children, and engage with other parents from school more than those from single parent or stepparent families.¹²⁹ Even when a parent remarries, the study showed that steppar-

121. *Yakich v. Aulds*, Eighteenth Judicial Circuit DuPage Cty., No. 15-F-651 (Ill. Cir. Ct. May 4, 2018).

122. “In fact, if considered in statistical terms, children from either non-married or divorced parents would be considered ‘normal’ based on today’s demographics.” *Id.*

123. Barry D. Ham, *The Effects of Divorce on the Academic Achievement of High School Seniors*, 3 JOURNAL OF DIVORCE & REMARRIAGE 167, 169 (2003).

124. *Effects of Divorce on Children’s Education*, MARRIPEDIA (last visited Dec. 18, 2018) http://marripedia.org/effects_of_divorce_on_children_s_education#fn_7 [hereinafter *Children’s Education*, MARRIPEDIA].

125. Brittany Odenweller, *Does Parental Divorce Have an Affect on a Child’s Education?*, BRIDGEWATER STATE UNIV. VIRTUAL COMMONS (2014), at 5, https://vc.bridgew.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1056&context=honors_proj.

126. *Children’s Education*, MARRIPEDIA, *supra* note 124.

127. *Id.*

128. *Id.*

129. PATRICK F. FAGAN, LEONIE TEN HAVE & WENDY CHEN, MARRIAGE & RELIGION RES. INST., MARRIAGE, FAMILY STRUCTURE, AND CHILDREN’S EDUCATIONAL ATTAINMENT 2 (2011),

ents are not as involved in their stepchild's homework than a father in an intact family.¹³⁰

Further, children from non-intact families face economic hardships that they may not have endured had their parents stayed married. Nearly half of families experience poverty after a divorce.¹³¹ According to one study, the household income of a child's family following divorce dropped about forty-two percent on average.¹³² This, in turn, affects the child's economic welfare.¹³³ After a divorce, children are more likely to experience poverty and diminished economic circumstances as a result of their parents' decreased net worth.¹³⁴ Later in life, children of divorce are more likely to experience the same financial problems as their parents, and their economic mobility is lower than those raised in intact families.¹³⁵

As a result of both the academic and financial impacts on children of divorce, it is no surprise that these children are consequently less likely to attend college than their counterparts from married families.¹³⁶ Over 57% of children from intact families enroll in college, whereas only 32.5% of children in stepfamilies, 47.5% of children in single-parent families, and 31.8% of children living in families with neither parent present will enter college.¹³⁷ Even when those students apply and are admitted, children from broken homes are less likely to receive support past the age of majority in order to attend college.¹³⁸

Based on the foregoing statistics that demonstrate the negative effects of coming from a non-intact family, it is clear that children raised in such families are likely to face both educational and social

<http://marri.us/wp-content/uploads/Marriage-Family-Structure-and-Childrens-Educational-Attainment.pdf>.

130. *Children's Education*, MARRIPEDIA, *supra* note 124.

131. *Effect of Divorce on Financial Stability*, MARRIPEDIA, <http://marripedia.org/effects.of.divorce.on.financial.stability> (last visited Oct. 4, 2019) [hereinafter *Financial Stability*, MARRIPEDIA].

132. *Id.*

133. A Canadian study shows that 61% of children's households become "per capital" low-income households after parents separate, compared with 13.1% when the parents are married. *Id.*

134. *Id.*

135. W. Bradford Wilcox et al., *Strong Families, Prosperous States: Do Healthy Families Affect the Wealth of Nations?*, THE AMERICAN ENTERPRISE INSTITUTE (2015), <https://www.aei.org/wp-content/uploads/2015/10/IFS-HomeEconReport-2015-FinalWeb.pdf>. Economic mobility is defined as "the ability of an individual or family to improve their income, and social status, in an individual lifetime or between generations." *Economic Mobility*, YOUR DICTIONARY, <https://www.yourdictionary.com/economic-mobility> (last updated Sept. 22, 2019).

136. Ham, *supra* note 123, at 169.

137. Gary D. Sandefur et al., *The Effects of Parental Marital Status during Adolescence on High School Graduation*, 71 SOCIAL FORCES 103, 111 (1992).

138. Cohen, *supra* note 33, at 202.

issues. Just because unconventional family structures are more common in our society today does not mean that the adverse effects on these children no longer exist. Therefore, there is still an ongoing legitimate state interest to mitigate these negative effects.

However, the inquiry does not end with the existence of a legitimate state interest. The challenged statute in question must also be rationally related to the legitimate interest in order to be deemed constitutional.¹³⁹ Therefore, the court must further analyze whether a statute that may require divorced parents to contribute to their child's college education is rationally related to mitigating the negative effects on a child after the divorce.

3. *Rational Relationship*

Under rational basis review, the standard for a finding of constitutionality is very low. The court will presume that the law is constitutional, and if there is any rational basis for a legitimate state purpose, the law will pass constitutional scrutiny.¹⁴⁰ The court need not consider all justifications for a statute, as long as some rational basis existed for the statute when enacted.¹⁴¹

Here, there seems to be justification for the statute under rational basis review and the constitutional challenge will likely fail. The statistics show that children from non-intact families face both academic and economic disadvantages and are less likely to attend college.¹⁴² Thus, the state has a legitimate interest in remedying as many of these disadvantages as possible. Section 513 attempts to mitigate these issues by helping those children who would have been able to go to college had their parents stayed married. The statute does not require all unmarried parents to pay for their child's college but encourages higher education if the child would have pursued it had their parents been married. In other words, the statute requires financially-able parents to contribute to their child's education, assuming that the child has the grades and ability to attend college. Because children of divorce are less likely to receive funding and parental support for higher education, § 513 is related to the state's interest of alleviating one of the negative impacts of divorce. Therefore, the statute is rationally related to the legitimate purpose of mitigating adverse impacts of divorce and the statute will be upheld as constitutional.

139. *Id.*

140. *Id.*

141. *Id.*

142. Ham, *supra* note 123, at 169.

B. Section 513's Current Effects

In the event that § 513 is upheld as constitutional, the statute is still unfair to many of the parents that it affects. While in theory, the statute is rationally related to a legitimate state interest and therefore makes it lawful, the application in real world scenarios can demonstrate how the statute often has an unequal and unfair application for married parents versus unmarried parents.

1. Constitutional Does Not Mean Fair

Consider how a child's choice of school may have different consequences in an intact family versus an unmarried family. In an intact family, where both parents are presumed to be responsible for contributing to the college expenses of their child, either or both parents are able to refuse to pay for the education if they disagree with the choice of school that the child wants to attend. Although the child is an adult, and is legally allowed to choose a college without parental input, the parents of an intact family may make an offer to contribute to college contingent upon the child's choice of school. For example, the parents may require the child to go to a cheaper school, or a school with better educational credentials, in order to receive help with funding. It often happens that both the child and the parents of an intact family are involved in the college decision-making process and come to an agreement without the interference of the court. However, if there is not an agreement, the parents are not legally obligated to pay for their child's college and the child is not legally obligated to make the decision with the input of their parents. In such a situation, the parents may simply refuse to pay for the child's college education, and the child can either oblige with their wishes or find funding of another source.

In a divorced family, however, this is not the case. Unlike intact families, divorced parents do not have the same leverage with their children when it comes to making the decision as to where to attend past the age of majority. The child may choose any school she so pleases regardless of price, academic credentials, fields of study offered, or other factors as may be preferred by either parent. If one parent were to oppose the child's college of choice, that parent may be legally ordered to contribute a large amount to the child's expenses without having any input in the child's decision. This would be the case as long as the other parent, in agreement with the child, files a petition in court pursuant to § 513. As long as the court considers the factors required by § 513, the parent has no ability to contest or bar-

gain with the child's decision and is legally obligated to provide support for his or her adult child's expenses.

This is precisely the issue in the pending *Yakich* case.¹⁴³ The father is willing to contribute to his child's expenses, but is *unwilling* to contribute to the current school she attends.¹⁴⁴ Regardless, the court ordered the father to pay for the child's expenses, leaving him no choice in the matter.¹⁴⁵ Although the statute currently calls for "all relevant factors" to be considered in determining college expenses, the court currently has the discretion to determine on a case-by-case basis whether or not choice of school qualifies as a "relevant factor" in awarding support.¹⁴⁶ Even when one parent has a legitimate objection to the choice of school, as in *Yakich*, there is no recourse for the parent if the court decides against him or her. This completely undermines a parent's ability to give leveraged input regarding where their money and child is going, which they would have been able to do had they stayed married.

The statute can also have unfair effects on the children of a parent's new marriage. In such a situation, a parent still has a child support obligation to his children from a previous marriage regardless of his decision to remarry and have new children. In cases when this obligation is extended to forced payments of post-majority child support, it may affect the quality of life and the ability to pay for the expenses of the parent's other children.

This scenario can be seen in *In re Marriage of Newton*, a 2017 Illinois case.¹⁴⁷ In the case, the child wanted to attend the University of Illinois; which is the most expensive public university in Illinois, priced at approximately \$33,000 to \$34,000 per year.¹⁴⁸ The father, while making a relatively decent salary, had remarried and testified that contributing to the child's tuition and expenses at the University of Illinois would place a large financial burden on him.¹⁴⁹ The father agreed to help contribute to expenses for a community college, where the child would automatically transfer to the University of Illinois

143. *Yakich v. Aulds*, Eighteenth Judicial Circuit DuPage Cty., No. 15-F-651 (Ill. Cir. Ct. May 4, 2018).

144. *Id.*

145. *Id.*

146. *Id.*

147. *In re Marriage of Newton*, 2017 WL 3484950 1, 2 (2017).

148. *Id.* at 1.

149. The father, Kenneth, made around \$94,714 in 2016. *Id.* at 2. However, Kenneth and his new wife were in thousands of dollars of medical debt because of his other daughter's congenital kidney disease. *Id.* Kenneth testified he would have to take out loans, would not be able to retire at a normal age, and may not be able to send his other child to college if forced to pay for the University of Illinois. *Id.*

upon completion.¹⁵⁰ The father believed that this was the more financially sensible option for all parties involved, and would prevent not only himself, but his daughter from going into debt.¹⁵¹ The court held that the student's impressive educational performance and hard work ultimately outweighed the father's arguments.¹⁵² The father was ordered to pay for one-third of the cost to attend the University of Illinois.¹⁵³

Newton is another example of the unfairness that can stem from § 513. The father was ordered to take on another obligation that would place a greater financial hardship on him and his other children.¹⁵⁴ This was despite his disagreement with the choice of school and that he no longer had to pay child support for his first child.¹⁵⁵ Furthermore, even though the statute required the court to consider the father's present and future financial ability, including his savings for retirement, the court still ordered him to pay one-third of the expenses despite the fact that his future finances and his ability to retire were diminished.¹⁵⁶

Additionally, the adverse effect that § 513 may have on a parent's remarriage and subsequent children may even go further than the example in *Newton*. The Second Circuit Court of Appeals has held that a parent's new spouse's income may be considered when determining the "financial resources" of that party pursuant to § 513.¹⁵⁷ Typically, a new spouse's financial ability is not considered in child support payments and they have no legal obligation to support his or her stepchildren.¹⁵⁸ However, because § 513 requires consideration of "financial resources" and not "income" of each parent, the Second Circuit determined that a new spouse's income is fair game in a determination of post-majority educational awards.¹⁵⁹ Under this reasoning, a parent's new spouse may be ordered to contribute college expenses to a stepchild. This creates direct financial pitfalls for a parent's new spouse and children, which may affect their lifestyle and financial abilities.

150. *Newton*, 2017 WL 3484950 at 2.

151. *Id.*

152. *Id.* at 3.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Newton*, 2017 WL 3484950 at 3.

157. *In re Marriage of Drysch*, 732 N.E.2d 125, 130 (Ill. App. Ct. 2000).

158. *Id.*

159. *Id.* at 646.

Finally, the statute can create yet another unfair legal disadvantage to children who live in intact families. Under § 513, children from intact families whose parents refuse to pay for their college education, despite having the available funds and means to do so, have no legal recourse under the law. However, children whose parents are divorced and refuse to pay but have the financial means, are able to recover the funds and attend college.¹⁶⁰ As the Pennsylvania Supreme Court noted in *Curtis v. Kline*, this could result in a discrepancy even within the same family.¹⁶¹ For example, a divorced parent may have one child of a previous relationship that does not reside with him and one from a current marriage that resides in his home.¹⁶² The father may have the financial means to pay full tuition for both of the children's colleges, but he refuses to do so. Pursuant to § 513, the child of his previous marriage can obtain a court order that requires the parent to pay for their college education.¹⁶³ However, the child that currently lives with the parent has no legal recourse and is unable to attend college. This is a unique example of how the statute can possibly create vast disparities between two classes of children.

The above examples demonstrate that although the rationale behind the statute may have pure intentions, the practical application may lead to unjust results.

2. *Does § 513 Achieve its Purpose?*

One alleged purpose of § 513 is to mitigate the adverse impacts that divorce has on a child.¹⁶⁴ The statistics show that these impacts are extensive.¹⁶⁵ However, while the provision claims to encourage higher education for children from non-intact families, the statute is underinclusive in achieving that goal. While children face educational barriers after a divorce that may prevent them from reaching higher education, these barriers often occur long before the decision to go to college is even considered. A child's parents could divorce at any stage of the child's life, and it is at this time when the child might begin to suffer

160. Under the 2016 amendments to § 513, children do not legally have standing to file a petition to recover educational expenses and cannot technically bring a claim. In order to recover these financial resources, the former spouse or parent seeking contribution must file the petition on behalf of the child. However, in the event of the death or legal disability of the parent who would have had standing, the child is able to file a petition on his own behalf. Yazici et al., *supra* note 1, at 424.

161. *Curtis v. Kline*, 666 A.2d 265, 270 (Pa. 1995).

162. *Id.*

163. *Id.*

164. *Kujawinski v. Kujawinski*, 376 N.E.2d 1382, 1389 (Ill. 1978).

165. See Ham, *supra* note 123; *Children's Education*, MARRIPEDIA, *supra* note 124.

from the aforementioned educational and economic disadvantages. When these disadvantages start at a young age, the child's grades might suffer. This could result in the child being less likely to apply and be accepted to college when they are older, even if they have a source of funding. Therefore, the statute, which alleges to mitigate the educational harms of divorce, does not come into play until a child's educational career is almost over, which may be too late. As a result, the statute's protections can sometimes be rendered useless as these children complete their school requirements and receive their degrees. An order to require parents to contribute to college expenses is useless if the child cannot get accepted to college.

Further, the statute purports to mitigate the economic harm on children of divorce. Because children from non-intact families are more likely to experience poverty,¹⁶⁶ the statute attempts to rectify this harm by ordering their divorced or unmarried parent to contribute to these college expenses. This means that two parents, who are less likely to be financially stable than if they were married, are ordered to pay a significant cost for their children to attend college. This results in further economic obligations for the parents. If there are other siblings in the family, they could face financial disadvantages as well. This could further decrease the parents' ability to provide for the minor children. Placing a larger financial burden on parents, in order to mitigate a financial burden on the child, seems to be counterintuitive.

III. IMPACT

This part recommends reform to the statute and assesses what impact those changes would have on families in the future.

A. *Proposed Reform of § 513*

Absent a finding of unconstitutionality, the legislature should be called to reform § 513. The statute in its current form orders the court to consider "all relevant factors," including the four main factors listed in § 513(b).¹⁶⁷ For an issue that can drastically change the financial welfare of the parents affected, there should be more rigid requirements or limitations on how a court comes to a conclusion. Several other states have adopted statutes that seem to encourage a fairer result.

166. See *Financial Stability*, MARRIPEDIA, *supra* note 131.

167. 750 ILL. COMP. STAT. ANN. 5/513(b) (West 2019).

In Maryland and Montana, for example, child support terminates when the child reaches the age of eighteen.¹⁶⁸ No statute or case law allows a court to order an unwilling parent to contribute to any expenses for the child once they have been emancipated.¹⁶⁹ However, parents may contractually obligate themselves to pay child support past the age of majority by incorporating an agreement into the judgment for divorce. If college is an expectation at the time of divorce, the parties can agree that they both will contribute when the time comes. If college is not something that the parents wish to provide for their child, it need not be included in the judgment. Although there is no certainty as to the parents' future financial abilities, the parents may still be able to create an agreement to contribute to the child's college expenses relative to their financial means. The issue of college expenses becomes another negotiation that the parties will work through during their divorce. This allows divorced parents to be treated as similarly as possible to married parents. Married parents have no legal obligation to support their children past the age of eighteen, unless they agree to do so. Therefore, a statute that only allows a court to order college expenses on a parent, if he has previously agreed to do so, affords divorced parents the same autonomy and decision-making power that married parents have. If the parent later refuses, the prior agreement will bind the parent unless a substantial change of circumstances has occurred between the time of the agreement and the time of the refusal. This is a viable option that Illinois should consider adopting.

Alternatively, the legislature should adopt more mandatory factors that the court must consider before awarding child support. As with many family law determinations, the decision on educational expenses is highly discretionary. As a result, many sections of the IMDMA set out several express "relevant factors" for the court to consider. This is in addition to any factors that the court might also deem relevant. For example, the property division section enumerates twelve comprehensive factors,¹⁷⁰ the maintenance section lists fourteen factors,¹⁷¹ and the determination of parental decision-making specifies fifteen factors.¹⁷² The benefit of including so many factors in the language of the statute is to ensure that the court is considering each and every possi-

168. Madeline Marzano-Lesnevich & Scott Adam Laterra, *Child Support and College: What is the Correct Result?*, 22 J. AMER. ACAD. OF MATRIMONIAL LAWYERS 335, 354, 360 (2009).

169. *Id.* at 354.

170. 750 ILL. COMP. STAT. ANN. 5/503(d) (West 2019).

171. *Id.* 5/504(a).

172. *Id.* 6/602.7(b).

bly relevant factor before making a decision that largely impacts a family.

Section 513, however, enumerates only four factors.¹⁷³ Though it states that “the court shall consider all relevant factors that appear reasonable and necessary,” only the four factors listed are a requirement for the court to consider.¹⁷⁴ After considering these four factors, the court has the ability to award tuition, housing, books, and medical and living expenses to one or both parents.¹⁷⁵ Though these expenses are capped at the amount of the cost at the University of Illinois at Urbana-Champaign,¹⁷⁶ these costs in total can add up to hundreds of thousands of dollars. Because of the high financial stakes that may result, the statute should include more than four factors to ensure that every possibility is explored before placing such an expensive burden on a parent.

Washington’s statute for post-majority support demonstrates how consideration of more factors can be beneficial. In Washington, the court must first determine “whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life.”¹⁷⁷ If the court finds that the child is still in fact dependent, the court then lists the following nonexclusive factors:

Age of the child; the child’s needs; the expectations of the parties for their children when the parents were together; the child’s prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; the parents’ level of education, standard of living, current and future resources[; and] . . . the amount and type of support that the child would have been afforded if the parents had stayed together.¹⁷⁸

In practice, this may result in a fairer ruling for parents. Before even considering the statutory factors, the court must first determine that the child is still financially dependent upon the parents and that support is absolutely necessary. After this initial finding, the extensive range of factors listed in the statute ensures that the court will consider every aspect of the family’s situation before making a determination. Many of these factors are not currently required under the Illinois statute, but may be beneficial to achieve a more desirable result for unmarried parents. Illinois should consider adopting some or all of the Washington factors in a revised version of § 513.

173. *Id.* 5/513.

174. *Id.* 5/513(j).

175. *Id.*

176. 750 ILL. COMP. STAT. ANN. 5/513(d)(2) (West 2019).

177. WASH. REV. CODE ANN. § 26.19.090(2) (West 1991).

178. *Id.*

CONCLUSION

Section 513 of the IMDMA requires certain unmarried parents to contribute to their child's college expenses. This statute imposes different requirements on parents based on their marital status. While many opponents of the statute challenge it as unconstitutional, when subject to rational basis review the statute will likely pass as rationally related to a legitimate state interest. However, the fact that the statute is constitutional does not mean that it is fair in application or that it actually achieves its intended goals. The statute would better serve families if parents were allowed to contractually obligate themselves to how they want to assist their children in paying for school or by adopting more pertinent factors when deciding how much money each parent should contribute. As it stands now, the statute has created a huge financial disparity between intact families and those [that] have gone through a divorce. For this reason, the legislature should reform the statute in order to distribute fairness across all families in today's society.

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